

Message Text

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ORIGIN EB-08

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R 162302Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY PARIS
INFO AMEMBASSY BERN
AMEMBASSY BONN
AMEMBASSY LONDON

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E.O. 11652: N/A

TAGS: EAIR, FR

SUBJECT: CIVAIR: PAN AM CHANGE OF GAUGE

1. FOLLOWING IS INFORMAL TRANSLATION OF TEXT OF NOTE
DELIVERED BY FRENCH AMBASSADOR TO ASSISTANT SECRETARY KATZ
ON MAY 15:

-- "MAY 13, 1978. THE EMBASSY OF FRANCE PRESENTS ITS
COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOR TO
INFORM IT OF THE FOLLOWING.

-- " BY NOTE OF APRIL 28, 1978, THE EMBASSY OF FRANCE DREW
THE DEPARTMENT OF STATE'S ATTENTION TO THAT FACT THAT IF
PAN AM PERSISTED IN ITS INTENTION TO OPERATE FLIGHTS
124/125, HONOLULU-SAN FRANCISCO-LONDON AND LONDON-PARIS
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IN BOTH DIRECTIONS , WHOSE SCHEDULE HAD NOT BEEN APPROVED
BY THE DIRECTION GENERALE DE L'AVIATION CIVILE (BUREAU OF
CIVIL AVIATION), THE FRENCH AUTHORITIES WOULD RESERVE THE
RIGHT TO TAKE ANY MEASURES THAT THEY DEEMED APPROPRIATE.
DESPITE THAT WARNING, ON MAY 1, 2, AND 3, PAN AM, WITH THE
CONSENT OF THE AMERICAN AUTHORITIES, OPERATED THE AFORE-
MENTIONED FLIGHTS WITH CHANGE OF GAUGE AT LONDON.

-- "THE FRENCH AUTHORITIES STRONGLY PROTEST THIS UNILATERAL ACTION WHICH VIOLATES THE FRANCO-AMERICAN AIR AGREEMENT OF MAY 27, 1946, AS AMENDED.

-- "IN AN APPROACH MADE TO THE MINISTRY OF FOREIGN AFFAIRS ON MAY 4, 1978, THE COUNSELOR FOR ECONOMIC AND COMMERCIAL AFFAIRS OF THE UNITED STATES EMBASSY AT PARIS, EXPRESSING HIS GOVERNMENT'S WISH NOT TO LET A SITUATION APT TO HARM GOOD RELATIONS BETWEEN THE TWO COUNTRIES BE PROLONGED, INFORMED THE DIRECTOR OF GENERAL AFFAIRS OF THE BUREAU OF ECONOMIC AND FINANCIAL AFFAIRS THAT PAN AM WOULD SUSPEND FLIGHTS TO PARIS AND PROPOSED THAT THE QUESTION OF WHETHER CHANGE OF GAUGE IN A THIRD COUNTRY 'IS OR IS NOT PROVIDED FOR BY THE AIR AGREEMENT' REFERRED TO ABOVE BE PROMPTLY SUBMITTED TO ARBITRATION.

-- "THE EMBASSY OF FRANCE HAS THE HONOR TO INFORM THE DEPARTMENT OF STATE THAT THE FRENCH AUTHORITIES TOOK NOTE OF THE ASSURANCE GIVEN ORALLY BY MR. MYERSON THAT PAN AM FLIGHTS WERE SUSPENDED.

-- "ALSO ANXIOUS NOT TO MAKE THE CLIMATE OF THEIR RELATIONS WITH THE UNITED STATES WORSE, AND WITH THE FOLLOWING OBSERVATIONS, THE FRENCH AUTHORITIES AGREE TO THE PRINCIPLE OF RECOURSE TO ARBITRATION.
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-- "(A) IT IS THE RULE THAT DISPUTES ARE SUBMITTED TO ARBITRATION ONLY IF THEY CANNOT BE SETTLED BY MEANS OF DIRECT NEGOTIATION. THE FRENCH AUTHORITIES CONSIDER THAT THIS MEANS HAS NOT BEEN EXHAUSTED. INDEED, THEY CONSIDER THAT TO DATE THERE HAVE BEEN NO SERIOUS AND REAL NEGOTIATIONS ON THE POSITIONS OF THE PARTIES, BUT A MERE STATEMENT BY THEM OF THEIR RESPECTIVE POINTS OF VIEW.

-- "(B) THEY ARE ASTONISHED THAT THE CAB INFORMED AIR FRANCE AND UTA ON MAY 9 OF ITS DECISION TO APPLY PART 213 TO THEM, THEREBY RESORTING TO NEW UNILATERAL MEASURES PROHIBITED BY INTERNATIONAL LAW AT THE VERY TIME WHEN THE

UNITED STATES GOVERNMENT PROPOSES AN ARBITRAL SETTLEMENT OF THE QUESTION.

-- "(C) THEY NOTE THAT IF THE AMERICAN AUTHORITIES PERSISTED IN PURSUING A COURSE OF UNILATERAL MEASURES, THE DAMAGING CONSEQUENCES THAT WOULD ENSUE FOR FRENCH AIRLINES WOULD CREATE AN ADDITIONAL DISPUTE REGARDING LEGALITY AND COMPENSATION.

-- (D) THE FRENCH AUTHORITIES ARE SURPRISED THAT THE AMERICAN AUTHORITIES PROPOSE RECOURSE TO ARBITRATION WITHOUT EXHAUSTING THE MEANS OF INTERNAL RECOURSE, AS IS

THE RULE IN INTERNATIONAL LAW. THEY WOULD LIKE TO KNOW THE REASONS FOR WHICH THE AMERICAN AUTHORITIES THINK IT IMPOSSIBLE TO FOLLOW THAT RULE.

-- "THE FRENCH AUTHORITIES ARE CONVINCED THAT IT IS IN THE COMMON INTEREST OF BOTH PARTIES TO FIND RAPIDLY A SOLUTION TO THE PRESENT DIFFICULTIES. THEY THEREFORE HOPE THAT THE NEGOTIATIONS NECESSARY FOR A THOROUGH EXAMINATION OF THE POSITIONS OF THE PARTIES AND, IF LIMITED OFFICIAL USE

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POSSIBLE, THEIR RECONCILIATION, MAY BEGIN AS SOON AS POSSIBLE IN PARIS OR WASHINGTON, AT THE CHOICE OF THE AMERICAN AUTHORITIES. THIS EXAMINATION COULD BE ENTRUSTED TO LEGAL EXPERTS OF THE TWO COUNTRIES.

-- "FURTHERMORE -- AND AS ALREADY STATED -- THE FRENCH AUTHORITIES DO NOT CONSIDER THAT THE OPERATING CONDITIONS REQUESTED BY PAN AM FOR FLIGHTS 124/125, HONOLULU-SAN FRANCISCO-LONDON AND LONDON-PARIS IN BOTH DIRECTIONS, ARE PERMITTED BY THE TREATY RELATIONS BETWEEN THE TWO COUNTRIES. THEY THEREFORE FEEL THAT THERE IS NO NEED TO ALTER THE POSITION THAT THEY HAVE TAKEN OR THE EXISTING STATUS QUO." VANCE

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